1878.

SUPREME COURT OF THE UNITED STATES.

No. 192.

LOFTIN COTTON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation	3	2
Service of citation	4	3
Bond for prosecuting writ of error	5	3
Summons	7	4
Marshal's return	8	4
Declaration	8	5
Defendant's plea	9	5
Cause transferred to district court	10	6
Demurrer of defendant	11	7
Joinder in demurrer	12	7
Demurrer overruled	12	7
Jury sworn	12	8
Verdict of Jury	13	8
Motion and grounds for arrest of judgment	13	9
Motion overruled	14	9
Judgment	14	9
Bill of exceptions	14	10
Clerk's certificate	15	10

J. & G. S. Gideon, Printers.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the United States district court of the northern district of the State of Florida, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea, which [is] in the said district court before you, between the United States and Loftin Cotton, a manifest error hath happened to the great damage of the said Loftin Cotton, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf:

You are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the day of next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-first day of March, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-second.

[SEAL.]

C. N. JORDAN, *Clerk,*
Clerk of the United States district court of the northern district of Florida.

The execution of this writ appears by the schedule hereto annexed.
C. N. JORDAN, *Clerk.*

Citation and return.

UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the United States district court, for the northern district court of Florida, wherein Loftin Cotton is plaintiff, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac H. Bronson, judge of the United States district court for the northern district of Florida, this 23d day of March, in the year of our Lord one thousand eight hundred and forty-eight.

I. H. BRONSON, *Judge of the district court of the U. S. for the northern district of Florida.*

Executed by delivering a copy of the within citation to C. C. Yonge, United States district attorney, for the northern district of Florida.

Arcadia, 3d March, 1848. ROBERT MYERS, *Marshal, northern district, Florida.*

Bond.

Supreme Court of the United States.

LOFTIN COTTON vs. THE UNITED STATES. } Trespass quare clausum fregit.

Know all men by these presents, that we, Loftin Cotton, Joseph Forsyth, and John Hunt, are held and firmly bound unto the above named United States, in the sum of one thousand dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, our and each of our executors and administrators, firmly by these presents. Sealed with our seals, and dated this 22d day of March, 1848.

Whereas the above named Loftin Cotton hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the United States district court for the northern district of Florida:

Now, therefore, the condition of this obligation is such, that if the above named Loftin Cotton shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue. LOFTEN COTTON, [SEAL.]
JOSEPH FORSYTH, [SEAL.]
JOHN HUNT. [SEAL.]

Signed and delivered in presence of—
BENJAMIN D. WRIGHT.
I. H. BRONSON,
Witness to signature of L. Cotton.

I approve of the foregoing bond of the sureties thereon.

I. H. BRONSON,
U. S. District Judge, &c.

LOFTIN COTTON vs. UNITED STATES. }

Transcript of record.

Pleas in the district court of the United States, for the northern district of Florida, before the honorable Isaac H. Bronson, judge of our said

court, at the city of Pensacola, in said district, at the March term of said court, in the year of our Lord one thousand eight hundred and forty-eight.

Be it remembered, that heretofore, to wit, on the twenty-fifth day of November, in the year one thousand eight hundred and forty-four, Walker Anderson, then district attorney of the United States, filed a precipe in the clerk's office of said superior court, at Milton, in the county of Santa Rosa, in said district, for a summons in action of trespass on behalf of the United States against Loftin Cotton in a plea of trespass, damages five thousand dollars. And thereupon, according to the course and practice of said court, the following summons was issued from the said court, and delivered to the marshal of said district, to wit:

[*Summons.*]

Territory of Florida, to the marshal of West Florida, greeting:

We command you that you summon Loftin Cotton to be and appear before the honorable the judge of our superior court of law, for the western district of Florida, at a court to be holden at the court-house in the town of Milton, on the second Monday of December next, to answer the United States of a plea of trespass, damages five thousand dollars; hereof fail not, and have you then and there this writ.

Witness the honorable Dillon Jordan, judge of our said court, at the court-house aforesaid, this the twenty-fifth day of November, one thousand eight hundred and forty-four.

E. S. AMOS, *Clerk.*

[*Marshal's return*]

On which summons the following return was made, to wit:

Received the twenty-sixth day of November; executed twenty-eighth November, one thousand eight hundred and forty-four, by reading the within writ to Loftin Cotton.

E. DORR, *Marshal.*
By W. W. HARRISON, *Dep. Marshal.*

Returned the thirtieth of November.

W. W. HARRISON, *Dep. Marshal.*

And afterwards, to wit, on the second Monday of December, in the year of our Lord one thousand eight hundred and forty-four, at the regular term of the court, to wit, the December term of said superior court, for the district of West Florida, at the court-house in the town of Milton, in the county of Santa Rosa, in said district, came the parties aforesaid, by their attorney, and thereon the said plaintiffs, by Walker Anderson, their attorney, filed their declaration in the said action, in the words and figures following, to wit:

[*Declaration.*]

In the superior court of the district of West Florida, December term, 1844.

TERRITORY OF FLORIDA,
Santa Rosa county, to wit:

The United States of America, plaintiffs in this suit, by their attorney, Walker Anderson, complains of Loften Cotton, who has been summons, &c., of a plea of trespass, for that the said defendant, on the 6th day of July, in the year of our Lord eighteen hundred and thirty, and on divers other days and times between that day and the day of commencement of this suit, with force and arms, in the county of Santa Rosa aforesaid, broke and entered a certain close of said plaintiffs, situate and being in the county of Santa Rosa aforesaid, and known as township two, and range twenty-eight north and south, and then and there felled, cut down, and destroyed the trees and pollards, to wit, fifty thousand pine trees and ten thousand juniper trees of said plaintiffs, of great value, to wit, of the value of five thousand dollars, then growing and being within said close, and took and carried away the same, and converted and disposed thereof to his own use, and other wrongs to the said plaintiffs then and there did, to the great damage of the said plaintiffs and against the peace of the Territory of Florida.

Whereupon the said plaintiffs say they are injured and have sustained damage to the amount of five thousand dollars, and therefore they bring their suit.

WALKER ANDERSON,
Attorney of the United States for the district of West Florida.

And afterwards, to wit, on the twenty-sixth day of March, in the year of our Lord eighteen hundred and forty-five, in the vacation after the said December term of the superior court aforesaid, came the said defendant and filed his plea to the aforesaid declaration in the said superior court, as of the preceding December term aforesaid, which said plea is in the words and figures following, to wit:

[*Defendant's plea.*]

LOFTEN COTTON
vs.
THE UNITED STATES.

The defendant comes and defends the force and injury, wherein &c., and says the plaintiffs ought not to have and maintain their said suit, because they are not guilty of the trespass in their declaration mentioned in manner and form as the same is therein charged against them, and of this they put themselves upon the country.

HENRY PATTERSON,
Attorney for Defendant.

And the plaintiffs doth the like.

W. ANDERSON, *U. S. Attorney.*

And afterwards, to wit, on the fifth day of June, in the year eighteen hundred and forty-five, in the superior court aforesaid, the following proceedings were had, and entries made, in the cause in the said superior court, to wit:

UNITED STATES
vs.
LOFTEN COTTON. } Trespass—Damages five thousand dollars.

And it is ordered by the court, that this cause be continued.

[*Cause transferred to district court.*]

And afterwards, to wit, on the fifth day of February, eighteen hundred and forty-eight, the said cause, together with the records of the proceedings therein, having been by virtue of the act of Congress, entitled "An act to regulate the exercise of the appellate jurisdiction of the Supreme Court of the United States in certain cases, and for other purposes," approved twenty-second of February, eighteen hundred and forty-seven, transferred to the district court of the United States, for the northern district of Florida; thereupon, on the day and year last aforesaid, the process, pleadings, and other papers and proceedings in said cause, were transferred to and filed with the clerk of this said district court of the district aforesaid, at Pensacola.

And afterwards, to wit, on the fifteenth day of January, at the January term of the said district court of the United States, in the year eighteen hundred and forty-eight, begun and held at the city of Tallahassee, in said district, the following order was made, to wit:

UNITED STATES OF AMERICA
vs.
LOFTEN COTTON. }

Trespass—Damages five thousand dollars.

It having been suggested by C. C. Yonge, esq., attorney for the United States, that the cause which was pending in the late superior court of the western district of Florida, in and for the county of Escambia, has been transferred to this court in pursuance of the act of Congress of the twenty-second of February, eighteen hundred and forty-seven, and that the pleadings and papers and the records of the proceeding therein have been filed with the clerk of this court at Pensacalo.

And on motion of said C. C. Yonge, esq., on behalf of the United States, it is ordered, that this cause be docketed in this court, and that the same stand for trial at the next term of this court, to be held in the city of Pensacola, on the first Monday in March next, and that it be placed upon the trial docket accordingly.

And it is further ordered, that a certified copy of this rule be served without delay upon the defendant above named, in order that he may have notice of the transfer of said cause, and that the same has been placed upon the trial docket, to be tried at the next term of said court.

I, R. B. Smith, clerk of said court, do hereby certify, that the foregoing is a true copy from the records of this court.

In witness whereof I have hereto set my hand and affixed the seal of said court, this eighteenth day of January, eighteen hundred and forty-eight, at Tallahassee, in the northern district of Florida.

R. B. SMITH, *Clerk.*

Which said order, having been delivered to the marshal of the said district, was duly returned and filed in said district court, with a return endorsed by him thereon, in the words and figures following, to wit:

Came to hand the seventh day of February, eighteen hundred and forty-eight; executed by leaving a copy of the within order with the defendant the eleventh day of February, eighteen hundred and forty-eight.

R. MYERS, *U. S. Marshal.*
By. F. T. COMMYNS, *Dep. Marshal.*

And afterwards, to wit, on the first Monday in March, in the year eighteen hundred and forty-eight, in the same term of March, in the district court of the United States aforesaid, for the northern district of Florida, came the parties aforesaid, by their respective attorneys, to wit, the said plaintiffs by C. C. Yonge, district attorney of the United States for the northern district of Florida, and the said Loften Cotton by Messrs. Wright, Jordan, and Tweed, his attorneys, as well as in person.

And thereupon the following proceedings were had in the said last mentioned cause, before the judge thereof, at the said March term at Pensacola, to wit:

The defendant, by leave of court, filed herein his demurrer, in the words and figures following, to wit:

[*Demurrer.*]

UNITED STATES
vs.
LOFTEN COTTON.

The defendant comes and defends the wrongs and *and* injury, when, &c., and says the said plaintiffs to have and maintain their said action ought not, because, he says, the said declaration of the said plaintiffs, and the matters and things therein contained in manner and form as the same are therein set forth, are not sufficient in law for the said plaintiffs to have and maintain their said suit; and this the said defendant is ready to verify; whereupon he prays the judgment of the court.

WRIGHT AND TWEED,
Attorneys for Defendant.

Joinder in demurrer.

C. C. YONGE, *U. S. Attorney.*

Wheupon the argument of counsel being heard upon the demurrer aforesaid, it is ordered by the court that the same be overruled.

Wednesday, March the eighth, eighteen hundred and forty-eight.

UNITED STATES vs. LOFTIN COTTON. } Trespass.

[*Jury sworn.*]

This day came the parties, by their attorneys, and thereupon came a jury, to wit:

Joseph Gagnett, Joseph Bates, William McVoy, F. M. Maura, Daniel Saint, Peter Gonzalis, Thomas Gunter, F. De la Rua, Peter Nicholson, Peter Duncan, B. F. Mager, W. M. Richburg, who being duly chosen, tried, and sworn to try the issues joined in this cause.

Whereupon the following witnesses were sworn, and gave evidence on the part of the United States, to wit:

W. B. Guine, George Lewis, John Hunt, E. Farrand, E. Simpson, B. Thompson, Jeremiah Saville, B. Peadon, J. C. Allin, B. Mitchell. But there not being sufficient time to finish the trial of this cause on this day, therefore, the further hearing of this cause is continued until to-morrow morning at nine o'clock. And the jury are adjourned till to-morrow, nine o'clock, A. M.

Thursday, March the ninth.

Court met according to adjournment.
Present—Hon. Isaac H. Bronson, judge.

[*Verdict of jury.*]

UNITED STATES vs. LOFTIN COTTON. } Trespass.

And now, at this day, came the parties aforesaid, by their attorneys, and the jury heretofore empannelled in the cause being called also came, and thereupon, the trial of the cause proceeded in, and the following witnesses were sworn and gave evidence on behalf of the defendant, viz., Samuel C. Reyser.

Whereupon the jury, after hearing the proofs and arguments of the respective parties, and the charge of the court thereon, and after having retired under the charge of a bailiff to deliberate upon their verdict, returned to the bar of the court, and say upon their oaths that they find the defendant guilty of the trespass complained of in the declaration, and assess the damage of the plaintiff by means of said trespass at three hundred and sixty-two dollars and fifty cents over and above their costs and charges by them about their suit in this behalf expended.

Monday, March the thirteenth, eighteen hundred and forty-eight:

Court met according to adjournment.
Present—Hon. Isaac H. Bronson, judge.

[*Motion for arrest of judgment.*]

UNITED STATES vs. LOFTIN COTTON. } Trespass.

In this case the defendant comes and moves in arrest of judgment, on the following grounds, to wit:

1. This being an action for a wrong alleged to have been suffered by the United States can be sued for by the authority of an act of Congress only. And there is no such act.

2. It is not competent for the district attorney or any other Executive officer of the Government to bring suit in the present form of action.

BENJAMIN D. WRIGHT,
Attorney for Defendant.

Saturday, March eighteenth, 1848.

The court met according to adjournment.
Present—Hon. Isaac H. Bronson, judge.

[*Motion overruled.*]

UNITED STATES vs. LOFTIN COTTON. } Trespass.

And now, at this day, the argument of counsel having been heard on the motion of said defendant in arrest of judgment, submitted on a former day, it is ordered by the court, that the said motion be overruled. Whereupon it is considered by the court that there is no sufficient reason to arrest the judgment, but that the plaintiff is entitled to judgment on the verdict.

Saturday, March the eighteenth, eighteen hundred and forty-eight.

[*Judgment.*]

UNITED STATES vs. LOFTIN COTTON. } Trespass.

And now, at this day, came the parties aforesaid, by their attorney, and the said plaintiffs by C. C. Yonge, their attorney, moves for judgment upon the verdict heretofore rendered in this cause. Therefore it is considered, that the said plaintiffs do recover against the said Loftin Cotton the sum of three hundred and sixty-two dollars and sixty-two cents, ($362 62,) for their damages by them sustained by means of the trespass in their declaration alleged, and by the jury aforesaid; and also one hundred and twenty-two dollars and twenty-two cents for their costs and charges by them about their suit in this behalf expended, by the court now here taxed and adjudged to them, and that the plaintiffs have execution therefor.